BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH

AT BILASPUR C.G.

In the Matter of W.P.No. 1031/2003

PETITIONER

Heeralal Dhoba, aged about 32 years, son of Shri Surat Ram Dhoba, resident of village Baghadol, Development Block Pusuar, Distt. Raigarh (Chhattisgarh)

P.R. No. 27/3/03
Presented by Shri Sanjay Kr. Agrawal
dated 27.3.03

Versus

RESPONDENTS

1) State of Chhattisgarh, through Principle Secretary, Panchayat and Gramin Vikas D.K.S. Bhawan, Mantralay, Raipur (CG)

2) Chief Executive Officer, Zila Panchayat, Raigarh (C.G.)

3) Collector, Raigarh (C.G.)

4) Sub Divisional Officer, Raigarh (CG).

5) Gram Panchayat Baghadola, through Sarpanch village Baghdola, Development block Pusuar, Distt. Raigarh (C.G.)

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI AND /OR ANY OTHER COMMAND OF LIKE NATURE

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 1031 सन् 2003

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

01/02/2005: -

Shri Roop Naik, learned counsel for the petitioner.

Shri Satish Gupta, learned Dy. G.A., for the State/respondents 1, 3 and 4.

Shri Alok Bakshi learned counsel for respondent No.2.

Shri A.N. Bhakta learned counsel for respondent No.5.

Heard finally with the consent of the counsel appearing for the respective parties.

The petitioner has challenged the legality, validity and propriety of the order dated 11/02/2003 passed by the Sarpanch of Gram Panchayat Baghadol by which on the basis of the resolution of Gram Sabha the petitioner was removed from the post of Panchayat Karmi of the said Gram Panchayat.

The case of the petitioner is that he was appointed on the post of Panchayat Karmi and thereafter Secretary of Gram Panchayat Baghadol in accordance with the provisions of Section 69 of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 *(for short 'the Adhiniyam)*. The date of appointment is 04/11/1995. A copy of the appointment letter is filed as Annexure-P/2.

Learned counsel appearing for the petitioner submits that the aforesaid removal was on the basis of resolution dated 01/01/2003 by the Gram Panchayat. The resolution was illegal for the reason that there had been no clear notice of the said agenda to the members of the Gram Panchayat. Against the said resolution, the petitioner filed an

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आदेश पत्रक (पूर्वानुबन्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

application under Section 91 of the Adhiniyam before the Sub Divisional Officer. The Sub Divisional Officer vide its order dated 20/21-01-2003 stayed the operation of the resolution dated 01/01/2003 till the disposal of the appeal. In fact, the aforesaid application filed by the petitioner was treated as an appeal by the Sub Divisional Officer. A copy of the stay order passed by the Sub Divisional Officer is filed as Annexure-P/3. It is also submitted by the petitioner that the aforesaid order of stay was served upon Sarpanch of the Gram Panchayat, Chief Executive Officer Janpad Panchayat and other concerned persons. Learned counsel further submits that an endorsement to this effect has also been made in the said order. Learned counsel draws the attention of this Court towards the order (Annexure-P/8) according to which, another resolution of removal of the petitioner was passed by the Gram Sabha on 27/01/2003. He further submits that in fact this resolution has been passed even after gathering knowledge about passing of the stay order by the Sub Divisional Officer by the Sarpanch of the Gram Panchayat. He submits that the resolution is in contravention of the order of stay granted in favour of the petitioner.

Besides above, learned counsel appearing for the petitioner also submits that the resolution for removal of the petitioner is a direct action, that is, even without giving any opportunity of being heard to him. He submits that according to the scheme applicable in cases of Panchayat Karmi a show cause notice was required to be given and further submits that since the petitioner was holding the post of Secretary, a

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आदेश पत्रक (पूर्वानुबद्ध)

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notice under Rule 7 of the M.P. Panchayat Service (Discipline and Appeal) Rules, 1999 was not given to him and the procedure laid down under Rule 7 was also not followed in case of the petitioner.

Return on behalf of the State and also on behalf of the other respondents have been filed. Neither learned counsel for the State nor counsel appearing for other respondents could point out any provision in support of the action of the Gram Sabha or the Gram Panchayat on the basis of which a person working as a Secretary/Panchayat Karmi of a Panchayat could have been removed even without serving a notice of show cause or even without affording any opportunity of being heard to him.

Since the order of removal of the petitioner from the post of Panchayat Karmi/Secretary has been directly passed by the Gram Sabha and also by the concerned authorities without affording any opportunity of being heard to him and even without issuing notice to the petitioner, the order is bad in law and the same deserves to be set aside by this Court. An opportunity of being heard is a basic principle of law, as any person working on a post cannot be removed without giving atleast a chance to him for explaining the situation on the basis of which a removal has been proposed. There is clear violation of the scheme as well as the rules referred to above and also there is violation of the fundamental principles of natural justice, hence, the petition is allowed. The impugned order dated 11-2-2003 (Annexure-P/1) and the resolution dated 27-1-2003 (Annexure-P/8) are hereby quashed.

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आदेश पत्रक (पूर्वानुबद्ध)

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	Learned counsel appearing for the petitioner also submits that during pendency of the instant writ petition, the Sub Divisional Officer has dismissed the appeal filed against the first resolution of the removal vide its order dated 28-8-2003. An amendment to this effect has already been incorporated in the petition. He has prayed for quashing of the order of Sub Divisional Officer. The Sub Divisional Officer had dismissed the appeal on the ground that the appeals are not maintainable against the resolution of removal of a Secretary/Panchyat Karmi from his post. This aspect of the matter is also considered. In fact, before the earlier resolution also there is no compliance of the provisions of the scheme as well as of the rules referred to above and this resolution and the orders passed in the appeal also deserves to be quashed. Consequently, the order dated 28-3-2003 (Annexure-P/9) passed by the Sub Divisional Officer and the earlier resolution dated 1-1-2003 in pursuance of which an appeal was preferred, ~~is~~ are also quashed. In the result the petition stands allowed.	**Sd/-** **Sunil Kumar Sinha** **Judge**

Brajesh